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4 BILL NO. S-74-03-21

5 SPECIAL ORDINANCE NO. S- 47-74

6 AN ORDINANCE approving a Lease with Mandel E. &  
7 Judith C. Himelstein for property at the South-  
west corner of Pontiac & Calhoun.

8 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

9 SECTION 1. The Lease dated March 14, 1974, between the City of Fort  
10 Wayne by and through its Mayor and the Board of Public Works, and Himelstein  
11 for the unimproved real property located at the southwest corner of Pontiac  
12 and Calhoun Streets, commonly known as 2702 South Calhoun Street to be used  
13 for any lawful purpose consistent with existing zoning ordinances and nor-  
14 mative commercial usage of the area in which the property is located for a  
15 cost of \$350.00 per month, plus taxes of approximately \$2,300.00 per year  
16 and any other related expenses all as more particularly set forth in said  
17 Lease which is on file in the Office of the Board of Public Works, and  
18 is by reference incorporated herein and made a part hereof, is hereby in all  
19 things ratified, confirmed and approved.

20 SECTION 2. This Ordinance shall be in full force and effect from and  
21 after its passage and approval by the Mayor.

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23 \_\_\_\_\_  
24 COUNCILMAN

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APPROVED AS TO FORM  
AND LEGALITY

  
CITY ATTORNEY

Read the first time in full and on motion by Moses, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City-Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, at \_\_\_\_\_ o'clock P.M., E.S.T.

Date: 3-26-74

Charles W. Klatsman  
CITY CLERK

Read the third time in full and on motion by Moses, seconded by Stier, and duly adopted, placed on its passage. Passed (~~1974~~) by the following vote:

AYES 8, NAYS 1, ABSTAINED \_\_\_\_\_, ABSENT \_\_\_\_\_ to-wit:

BURNS	_____	<u>✓</u>	_____	_____
HINGA	<u>✓</u>	_____	_____	_____
KRAUS	<u>✓</u>	_____	_____	_____
MOSES	<u>✓</u>	_____	_____	_____
NUCKOLS	<u>✓</u>	_____	_____	_____
SCHMIDT, D.	<u>✓</u>	_____	_____	_____
SCHMIDT, V.	<u>✓</u>	_____	_____	_____
STIER	<u>✓</u>	_____	_____	_____
TALARICO	<u>✓</u>	_____	_____	_____

DATE: 4-9-74

Charles W. Klatsman  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. 2-4774 on the 9th day of April, 1974.

ATTEST: (SEAL)

Charles W. Klatsman  
CITY CLERK

Samuel J. Talarico  
PRESIDENT OFFICER

Presented by me to the <sup>acting City Controller</sup> Mayor of the City of Fort Wayne, Indiana, on the 18th day of April, 1974, at the hour of 11:00 o'clock A M., E.S.T.

Charles W. Klatsman  
CITY CLERK

Approved and signed by me this 11th day of April, 1974, at the hour of 9:30 o'clock A M., E.S.T.

Edward H. Kammler  
MAYOR

*Handed  
7/9/73*

Bill No. S-74-03-31

REPORT OF THE COMMITTEE ON PUBLIC WORKS

We, your Committee on Public Works to whom was referred an Ordinance  
approving a Lease with Mandel E. & Judith C. Himelstein  
for property at the Southwest corner of Pontiac & Calhoun.

have had said Ordinance under consideration and beg leave to report back to the Common  
Council that said Ordinance DO PASS.

- Winfield C. Moses, Jr - Chairman
- John Nuckols - Vice-Chairman
- James S. Stier
- William T. Hinga
- Vivian G. Schmidt

*Winfield C. Moses Jr*  
*John Nuckols*  
*James S. Stier*  
*William T. Hinga*  
*Vivian G. Schmidt*

L E A S E

THIS INDENTURE OF LEASE, made this 14<sup>th</sup> day of March, 1974, between MANDEL E. HIMELSTEIN and JUDITH C. HIMELSTEIN, his wife, hereinafter referred to as "Lessors", and THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE, hereinafter referred to as "Lessee".

W I T N E S S E T H:

The Lessors hereby demise and lease unto the Lessee and the Lessee hereby hires and takes from Lessors the unimproved real property located at the southwest corner of Pontiac and Calhoun Streets, more commonly known and described as 2702 South Calhoun Street, Fort Wayne, Indiana, to be used for any lawful purpose consistent with existing zoning ordinances and normative commercial usage of the area in which the property is located.

1. TERM. This Lease shall be for a term of ten (10) years, commencing on the first day of April, 1974, and terminating on the 31st day of March, 1984, unless sooner terminated as herein provided.

2. RENTAL. The Lessee shall pay to the Lessors at 111 West Monroe, Suite 1107, Phoenix, Arizona, 85003, or at such other place as Lessors shall designate in writing, as rental for the premises during the entire term of this Lease, in lawful money of the United States, in equal monthly installments in advance on the first day of each and every month, commencing on the first day of April, 1974, without deduction or offset, the sum of THREE HUNDRED FIFTY AND NO/100 (\$350.00) DOLLARS per month.

3. NET RENTAL. The rental herein specified shall be net, net, net to the Lessors in each year during the term of this Lease, and all costs, expenses and obligations of every kind

relating to the leased premises which may arise or become due during the term of this Lease shall be paid by Lessee. Lessee further agrees to pay the real estate taxes payable in the spring of 1974, and each year thereafter during the entire term hereof.

4. MAINTENANCE AND REPAIRS. The Lessee shall, at its sole cost, keep and maintain the leased premises in good order, condition and repair.

5. ALTERATIONS AND IMPROVEMENTS. Lessee shall, without the consent of the Lessors, have the right to improve the leased premises at its sole cost and expense, including by way of illustration and not of limitation, the excavation, surfacing, striping, meter installation and lighting for municipal parking lot uses, and other uses as may hereafter seem appropriate to Lessee, provided, however, that Lessee shall not construct or erect any buildings upon the subject premises without the Lessors' written consent.

6. INDEMNIFICATION OF LESSORS. The Lessee agrees, at all times, to relieve, indemnify, protect and save harmless Lessors from any claims and liability, including reasonable expenses incurred in defending against claims and liability for death or injury to persons or damage to property that may, in whole or in part, arise from or upon the demised premises during the entire term of this Lease for any cause whatsoever.

7. UTILITIES. The Lessee shall pay all charges for water, electricity, gas, telephone, or any other utility service furnished to the leased premises and any improvements thereon.

8. RIGHT OF FIRST REFUSAL. In the event Lessors desire to sell the leased premises and receive a bona fide offer from any third party to purchase the same, Lessors shall give written notice to Lessee of such offer and the terms and conditions thereof. Lessee shall have the absolute right, for a period of thirty (30)

days after receipt of such notice, to purchase the demised premises upon the same terms and conditions as offered by such third party. If the Lessee does not exercise its right to purchase the demised premises, any sale by Lessors to any third party shall be made subject to all of the terms and conditions of this Lease, and any new owner thereof shall assume the burdens hereunder.

In addition to this right of first refusal, the Lessee shall also have the option to purchase the leased premises at the expiration of the term of this Lease (provided that Lessors shall not have sold the leased premises pursuant to such right of first refusal) upon such terms and for such price as the parties may agree upon during the final year of such Lease. In the event the parties are unable to so agree prior to the termination of this Lease, the option shall thereupon become null and void.

9. RIGHT TO RENEW. At the expiration of the term hereof, provided that the Lessee shall not have exercised its option to purchase or shall not have exercised its right of first refusal, the Lessee shall have the further right to extend the term hereof for an additional ten (10) years for such rental and upon such terms as may be agreed upon between Lessors and Lessee, not less than sixty (60) days prior to the end of the initial term hereof. In the event that Lessors and Lessee are unable to so agree within such period, the Lessee's right to extend the term hereof shall be deemed null and void and the Lease shall end at the expiration of its initial term.

10. EXERCISE OF RIGHT. All rights herein granted by the Lessors to the Lessee, including the right of first refusal, the option to purchase, and the right to extend the term hereof, shall be exercised in writing not less than sixty (60) days prior to the end of the initial term of this Lease and shall be delivered

to Lessors at the address where rental is paid by certified mail, return receipt requested. All notices hereunder by either party shall also be in writing and delivered by certified mail.

11. USE AS PARK OR REST FACILITY. In the event the Lessee shall determine that the use for the leased premises shall be that of a city park or recreation or rest area for the benefit of the public, the Lessors shall have the right to name the park and place such memorial or name as Lessors may reasonably determine upon the property.

12. SUBLEASE. The Lessee shall have the absolute right to sublease the leased premises at its discretion, provided that any such sublease shall not affect Lessee's liability hereunder, and provided further that all sublessees shall be subject to each and every term hereof.

13. RIGHT TO CANCEL. At any time during the first eighteen (18) months of the term of this Lease, either party shall have the right to terminate by delivering to the other a one hundred twenty (120) day notice of cancellation. In the event the Lessors shall terminate the Lease, they shall pay to the Lessee the cost of Lessee's improvements, (not including parking meters or lighting facilities), less a reasonable sum for depreciation and wear and tear. If the Lessee shall terminate this Lease, the Lessors shall have the option to retain all of the improvements placed upon the leased premises by Lessee (not including parking meters or lighting facilities) or may require Lessee to return the property to its original condition, reasonable wear and tear excepted. In the event that neither party shall notify the other of such cancellation on or before five o'clock P.M., August 31, 1975, this Lease shall not thereafter be terminable until expiration of its full term, except upon a default by either party.

14. DEFAULT. In the event of any default hereunder, each party shall have all such rights against the other as they shall be entitled to by law. The Doctrine of Election of Remedies is waived. The losing party shall pay to the prevailing party all attorneys' fees and costs that may be incurred.

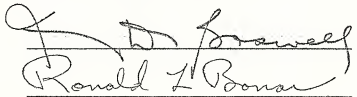
15. INSPECTION. The Lessee shall permit Lessors to enter upon the leased premises at any reasonable time and upon reasonable notice for the purpose of inspecting the same, provided that Lessee's use shall not be unreasonably interfered with.

16. BINDING EFFECT. This Lease shall be binding upon and shall inure to the benefit of the parties hereto, their assigns, heirs, successors and personal representatives.

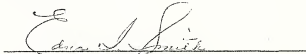
IN WITNESS WHEREOF, the parties hereto have placed their hands the day and date first above written.

LESSEE:

BOARD OF PUBLIC WORKS OF THE CITY  
OF FORT WAYNE


  
\_\_\_\_\_  
Ronald L. Bonar

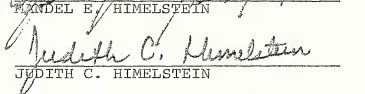
ATTEST:

  
\_\_\_\_\_  
E. L. Smith

DATE: March 14, 1974

LESSORS:

  
\_\_\_\_\_  
MANDEL E. HIMELSTEIN

  
\_\_\_\_\_  
JUDITH C. HIMELSTEIN



STATE OF ARIZONA       )  
                              ) ss:  
County of Maricopa    )

On this, the 4th day of March, 1974, before me, the undersigned officer, personally appeared MANDEL E. HIMELSTEIN and JUDITH C. HIMELSTEIN, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Anthony M. Bollmann  
Notary Public

My Commission Expires:

My Commission Expires Oct. 19, 1977

DIGEST SHEET

12-74-03-31

TITLE OF ORDINANCE: Lease agreement for property at Pontiac/Calhoun for parking lot.DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: The City is desirous of providing off-street parking in  
the Pontiac-Calhoun area. The Board of Works has been offered a ten year lease  
agreement on the property at the southwest corner of Pontiac and Calhoun. Plans  
are to install parking meters.

EFFECT OF PASSAGE: City will move to provide metered parking at above location.EFFECT OF NON-PASSAGE: Cancellation of proposed lease.

MONEY INVOLVED (Direct Costs, Expenditures, Savings): \_\_\_\_\_  
\$350.00 per month rental, plus taxes of approximately \$2300 per year and any  
other related expense.

ASSIGNED TO COMMITTEE (J.N.): Board of Works